**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN,
JAIPUR BENCH, JAIPUR.**

S. B. CIVIL MISC. APPEAL NO. 4129/2006

**GHANSHYAM JHALANI
v
RAMESHWAR JHALANI & OTHERS**

DATE OF JUDGMENT: 22nd MARCH, 2007.

Hon'ble Mr. Justice R. S. Chauhan

**Mr. Ashok Sharma for the appellant.
Mr. Prakash Thakuria with
Mr. Amardeep Atwal for the respondent No.2.
Mr. Manu Bhargava for the respondent No.3.**

By Court:

This appeal arises out of the order dated 6.9.06 passed by the Addl. District & Sessions Judge No. 1, Jaipur District, Jaipur, whereby the learned Judge has dismissed the application for temporary injunction under Order 39 Rule 1 and 2 of Code of Civil Procedure (henceforth to be referred to as 'the Code', for short).

The brief facts of the case are that the appellant herein instituted a civil suit for partition, declaration and permanent injunction against the respondent-defendants. According to the plaint, the plaintiff and the respondent No. 1 to 3 are having some ancestral joint property consisting of land bearing Khasra Nos. 343, 344, 345, 346, 396, 397 and 398, measuring in total 3.34 hectares,

situated in village Surajpura, Tehsil Sanganer, District Jaipur. They also have one house one shop and one 'Nohra', measuring 35 x 35 feet, situated in village Vatika. The said constructed property is in their joint possession. Further, the land in Surajpura was purchased by Shri Kanhaiyalal Ji in 1983 through a registered sale-deed in the name of his elder son, Shri Motilal Jhalani ,out of the income of the joint family business. Shri Kanhaiyalal had three sons, namely Motilal, Rameshwar (respondent/defendant No.1) and Ghanshyam (appellant/plaintiff). Shri Kanhaiyalal was the 'Karta' of joint Hindu Family till his death in 1963. Respondent-defendant No. 2 and 3 are the sons of Shri Motilal Ji and the grand-sons of Kanhaiyalal Ji. Shri Motilal Ji expired in the year 2003. It was further contended that although Shri Kanhaiyalal was resident of Vatika, but having no source of income in the village, he had settled down in Ahmednagar (Maharashtra) and started a coal business in the partnership with his brother, Jagannath. Out of the income of the said coal business, Kanhaiyalal Ji purchased 1/4th share in the House No. 1035 at Ahmednagar and the said property was also purchased in the name of Shri Motilal, the eldest son. It was further contended that the property situated in village Vatika and village Surajpura was also purchased out of the joint family fund. According to the plaintiff when Shri Motilal sold 1/4th share in Ahmednagar, he divided the proceed money amongst his two other brothers namely, the plaintiff

and defendant No.1 It was further alleged that the income generated from the agricultural land was equally distributed among the brothers. However, after the death of Shri Motilal Ji, his sons, the respondent-defendant No. 2 and 3 got the land illegally mutated in their name. Since they wish to sell, alienate or dispose of the land, the plaintiff filed the civil suit. Alongwith the suit he also filed an application for temporary injunction. Respondent No.1 and respondent No. 3 submitted their written statement wherein they denied the averments of the plaint. After hearing both the sides, vide order dated 6.9.2006 the learned Judge has dismissed the said application. Hence, this appeal before this Court.

A bare perusal of the impugned order clearly reveals that as far as the land in Surajpura is concerned, the plaintiff had also filed a suit before the Sub-Divisional Officer-II. This fact has been admitted by the plaintiff himself in para 8 of the plaint. According to the respondents, the Sub-Divisional Officer did not grant only interim injunction in favour of the plaintiff. Thereafter, the plaintiff filed an appeal before the Revenue Appellate Authority and even the Revenue Appellate Authority has dismissed the appeal vide its order dated 12th April, 2006. However, the main suit is still pending before the Sub-Divisional Officer-II. Therefore, the learned Judge has rightly concluded that according to the order of the Sub-Divisional Officer and according to the order of the Revenue Appellate Authority, it is

the respondent-defendant No. 2 and 3 who are in possession of the land. Moreover, a litigant cannot be permitted to go forum shopping. In case the matter is pending before the Revenue Court, the same issue cannot be raised before the Civil Court. Since the plaintiff could not succeed before the Revenue Court, he cannot take recourse to the Civil Court for being able to get a temporary injunction in his favour. As far as the property in Surajpura is concerned, this Court does not find any illegality or any perversity in the impugned order.

As far as the property in village Vatika is concerned, the learned counsel for the appellant has tried to argue that Shri Motilal Ji had claimed in certain documents that he had certain joint Hindu family property at Vatika. However, as noticed by the learned Judge, the said property had not been described in the said documents. Moreover, the other documents relied upon by the learned counsel for the appellant are a matter of evidence during trial. Therefore, the learned Judge was justified in dismissing the application for temporary injunction.

Hence, there is no force in this appeal. It is, hereby, dismissed.

(R.S. CHAUHAN) J.

MRG.